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HUNTINGTON *v.* ATRILL IN THE SUPREME COURT. — A note in our October number referred to the decision of this case in the Judicial Committee of the Privy Council. On December 12 Mr. Justice Gray, on similar facts, delivered the opinion of the United States Supreme Court to the same effect.

A bill was filed in the Circuit Court of Baltimore city to set aside a fraudulent conveyance of stock, and to charge the stock with a judgment recovered against Atrill in New York upon his liability as a director in a New York corporation, under the statute providing that on any false material representation the directors should become personally liable for all debts of the corporation contracted while they were directors. The demurrer to the bill was, as far as the judgment in New York was concerned, on the ground that a judgment for a penalty could have no effect in another State; and this was the ground taken by the Supreme Court of Maryland.

The case comes to the United States Supreme Court on a writ of error, raising the federal question whether the decision of the Maryland court does not violate the provision of the Act of Congress of May 26, 1790, to the effect that the record judgments rendered by a court of any State shall have such faith and credit given to them in every court in the United States as they have by law or usage in the courts of the State where they are taken.

The principal question discussed, — the proper meaning of the word "penal" in international law, — is treated in the opinion with most satisfactory clearness and thoroughness. Marshall's famous maxim, "The courts of no country execute the penal laws of another," has been frequently misinterpreted, the court says, through the various shades of meaning allowed to "penal" in our language. It is commonly used to include the extraordinary liability to which the law subjects a wrongdoer in favor of the person wronged, not limited to the damages suffered; but strictly and properly. penal laws are "those imposing punishments for an offence committed against the State, and which by the English and American constitu-

tions the executive of the State has power to pardon." It is the same question as whether an offence is in a broad sense civil or criminal, — a wrong to the individual or a wrong to the State, — according to Blackstone's classification. "The question whether a statute of one State, which in some aspects may be called penal, is a penal law in the international sense, so that it cannot be enforced in the courts of another State, depends upon whether its purpose is to punish an offence against the public justice of the State, or to afford a private remedy to a person injured by the wrongful act." Therefore, though the statute in question, as it imposes a burdensome liability on the offenders, may be called penal in the sense that it is to be strictly construed, it is as to the creditor clearly remedial, relief being at his suit only, and limited to the damages suffered.

The Chief Justice dissents, holding the court has no jurisdiction, as it was for the Maryland court to determine whether the enforcement would involve the penal laws of another State; and State courts do not adjudicate the question of statutory delicts at their peril. No authorities on the point are quoted by the Chief Justice, and his short remarks can take off very little from the weight of the decision. The majority agree fully with the decision of the Privy Council, which they quote at length with approval, that the question of whether a statute is penal is not in any sense local, but one to be decided by the court where the remedy is sought. The Chief Justice goes on to say that full faith and credit were given to the judgment, since it was admitted in evidence. Here, too, he is content to let his statement stand on its own merits. But the provisions of the Constitution of the United States, as the court says, are to be read in the light of established principles; and, against the dissenting judge's bare statement that the Act of Congress was satisfied by merely treating the New York judgment as evidence, the majority opinion quotes many cases to show that, while there are certain limits to the effect to be given foreign judgments (they are not, for instance, on the footing of domestic judgments, and to be enforced by execution), yet, when duly pleaded and proved in the courts of another State, "they have the effect of being not merely *prima facie* evidence, but conclusive proof of the rights thereby adjudicated."

Legitimated Children as Heirs and Devisees. — At last, in *In re* Gray's Trust, [1892] 3 Ch. 88, the English courts have advanced to the third, and probably their last, position in the long-disputed question of the rights, as heirs and devisees, of children illegitimate by the law of England, but legitimated by the law of the country which saw their birth.

The testator bequeathed a portion of his estate, real and personal, to the children of his son. His son, domiciled in the Cape of Good Hope, had a child by a woman out of wedlock. Subsequently he married the woman. By the Roman-Dutch law of the Cape, this child, although *antenatus*, was legitimated for all purposes by the subsequent marriage. In England, of course, a child *antenatus* is not legitimated by the subsequent marriage of its parents. The question arose as to the child's taking the realty. To take he must be legitimate. But legitimate by what laws?

The questions at one time were whether legitimacy was a personal incident, — a quality of the *status* of the individual following the law of his domicile, — and whether one country should recognize, by the comity